Wallace International de Puerto Rico, Inc. and International Silver de Puerto Rico, Inc. *and* Congreso de Uniones Industriales de Puerto Rico. Cases 24–CA–6969, 24–CA–7007, 24–CA–7062, 24–CA–7083, and 24–RC–7640

April 12, 1999

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

On August 10, 1995, Administrative Law Judge Richard H. Beddow Jr., issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief and a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

1. We adopt the judge's finding that the Respondent violated Section 8(a)(1) of the Act and interfered with the election by threatening employees, in a video shown to all of them within 2 days before the election, that plant closure would result if they voted to select the Union as their collective-bargaining representative. Near the end of the video, the mayor of San German addressed the Respondent's employees, urging them not to vote for representation by the Union. The Mayor's message included a plain, if implicit, threat that the Respondent would close its San German facility if the Union was voted in. The mayor observed that Wallace had greatly helped the local economy and stressed the importance to employees and to the community of keeping that industry in San German. He noted that the election would be held shortly and stated that he agreed with the Respondent that the employees did not need a union. He then went on to state, "The important thing is for Wallace International to remain in San German." The mayor then told the employees that they should let the Respondent know that they and it were "in common agreement" so that the economic benefits their community needed would continue. Taken together, the mayor's remarks mean only one thing: that if the employees wanted the Respondent to remain in San German, providing an economic benefit to themselves and their community, they had better show that they were "in common agreement" with the Respondent by rejecting the Union.[2] The import of the mayor's comments was put in sharp focus by earlier portions of the video, which showed scenes of a closed plant and contained statements by the narrator as well as by disgruntled employees from the depicted workplaces, to the effect that plants had closed when unions came in.

2. The judge recommended that the June 22, 1994 election be set aside, and found that the Respondent's commission of violations of Section 8(a)(1) and parallel objectionable conduct rendered the possibility of a fair rerun election slight. Determining that the Union had obtained valid authorization cards from a majority of unit employees, the judge concluded that a bargaining order was necessary to remedy the Respondent's unfair labor practices pursuant to *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969).

We would normally at least consider issuing a bargaining order in these circumstances, which we discuss more fully below. However, given the long and unjustified delay of the case here at the Board, we recognize that such an order would likely be unenforceable. See generally, *Flamingo Hilton-Laughlin v. NLRB*, 148 F.3d 1166, 1171 (D.C. Cir. 1998), and *Charlotte Amphitheater Corp. v. NLRB*, 82 F.3d 1074, 1078 (D.C. Cir. 1996). Accordingly, rather than engender further litigation and delay over the propriety of a bargaining order, we believe that employee rights would be better served by proceeding directly to a second election.[3]

3. Nevertheless, we find that the extent and severity of the Respondent's unfair labor practices are likely to have a pervasive and lasting deleterious effect on the employees' exercise of their Section 7 rights, warranting certain extraordinary remedies. The Respondent has demonstrated a proclivity to violate the Act when faced with a union organizing effort among its employees. Specifically, in *Wallace International of Puerto Rico*, 314 NLRB 1244 (1994) (*Wallace I*), the Board adopted the

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We find that the mayor acted as an agent of the Respondent and, consequently, his conduct is attributable to the Respondent. By including the mayor's comments in its video, the Respondent clearly ratified his remarks and adopted them as its own. Further, we find that the Respondent clothed the mayor with the apparent authority to act for it. The Respondent invited the mayor to speak to the employees regarding the union organizational effort, and the mayor's comments were made in the interest of the Respondent and for its benefit. See *Dean Industries, Inc.*, 162 NLRB 1078, 1092 (1967). In view of our finding that the mayor's statements in the video violated Sec. 8(a)(1) by unlawfully threatening plant closure, and in view of the other findings by the judge which we adopt, we find it unnecessary to pass on the judge's findings that other representations in the video, and in a memo distributed by the Respondent to employees, also violated Sec. 8(a)(1). Thus, although we adopt the judge's finding that Supervisor Cruz's statements to employee Figueras referring to the video violated Sec. 8(a)(1), we do so only because those statements adverted to the plant closing threat contained in the video.

[3] Given our finding that a *Gissel* bargaining order is not warranted, it is unnecessary to reach the issue of whether the Union enjoyed the support of a majority of unit employees.

administrative law judge's finding that, within only days of the onset of the employees' organizing efforts, the Respondent violated Section 8(a)(1) variously by creating the impression that its employees' union activities were under surveillance, threatening employees with discharge and other unspecified reprisals because of their union activities, and promising wage increases and offering better jobs in order to discourage employees' support for the Union and their activities on its behalf. The judge in *Wallace I* also found that the Respondent's misconduct was objectionable and recommended setting aside the election in that case (Case 24–RC–7529). While *Wallace I* was pending before the Board, however, the Union withdrew its objections and filed the petition in this proceeding in order to secure a new election more expeditiously. Thus, the June 22, 1994 election in this case essentially served as a second election in *Wallace I*.

When the employees pursued another organizational effort, the Respondent again embarked on a series of unfair labor practices, just as it had when the petition in Case 24–RC–7529 was filed. That conduct resulted in this case. Indeed, the violations were more serious the second time around. This time, as fully discussed in the judge's decision, the Respondent violated Section 8(a)(1) on several occasions by threatening employees with plant closure. The Respondent's threats of plant closure, like the threats of job loss in *Wallace I*, have a particularly coercive effect on employees. We have long held that threats of plant closure and other types of job loss are more likely than other types of unfair labor practices to affect the election conditions negatively for an extended period of time. *Garney Morris, Inc.*, 313 NLRB 101, 103 (1993), enfd. 47 F.3d 1141 (3d Cir. 1995). Such threats serve as an insidious reminder to employees every time they come to work that any effort on their part to improve their working conditions may be met with complete destruction of their livelihood. *Electro-Voice, Inc.*, 320 NLRB 1094, 1095 (1996). Moreover, the Respondent's video conveyed the threat of plant closing directly to all unit employees immediately before the election. Thus, the threat and its effects pervaded the entire work force. In addition, the threat of closing contained in the video provided a powerful context for the additional threats of closing made on the eve of the election by Supervisors Lugo and Cruz. Taken together, these statements informed employees in an unmistakably coercive manner that their livelihoods, as well as the economic vitality of their community, depended on their rejection of the Union in the election.

The undeniable effect of such coercive conduct is even more serious because the misconduct occurred in the employees' second attempt to decide and express their wishes regarding union representation through a Board election. Both elections were marred by unlawful actions by the Respondent that severely hampered employee free choice and therefore rendered the elections unreliable indicators of the employees' true sentiments.

As indicated above, we would normally consider issuing a *Gissel* bargaining order in these circumstances, but have concluded that directing another election would best serve employee rights. However, given the serious and pervasive nature of the Respondent's unfair labor practices in this case and in *Wallace I*, we find that our direction of a new election must be accompanied by certain special remedies. We reach this conclusion because we find that the Respondent's repeated violations and the coercive effect, in particular, of its plant closing threats, would be likely to have longstanding effects on employees in the bargaining unit.

Under these circumstances, we find that special remedies are necessary to dissipate as much as possible any lingering effects of the Respondent's unfair labor practices, and to ensure that a fair election can be held. The Board's delay in acting in this case, although unfortunate, was no more the fault of the Union or the employees who were denied a fair opportunity to choose whether they desired union representation than it was of the Respondent. Our order will afford the Union "an opportunity to participate in this restoration and reassurance of employee rights by engaging in further organizational efforts, if it so chooses, in an atmosphere free of further restraint and coercion." *United Dairy Farmers Cooperative Assn.*, 242 NLRB 1026, 1029 (1979), enfd. in relevant part 633 F.2d 1054 (3d Cir. 1980).[4]

For the foregoing reasons, we shall order the Respondent to supply the Union, on its request made within 1 year of the date of this Decision and Order, the names and addresses of its current unit employees. We shall also order the Respondent, during the time the required notice is posted, to convene the unit employees during working time and permit a Board agent, in the presence of a responsible management official of the Respondent, to read the notice to the employees.[5]

ORDER

The National Labor Relations Board orders that the Respondent, Wallace International de Puerto Rico, Inc. and International Silver de Puerto Rico, Inc., San Ger-

[4] The Board has previously ordered these remedies in cases where it found that remedial measures in addition to the traditional remedies for unfair labor practices were appropriate. See, e.g., *Monfort of Colorado*, 298 NLRB 73, 86 (1990), enfd. in relevant part 965 F.2d 1538 (10th Cir. 1992); *United Dairy Farmers Cooperative Assn.*, supra, at 1030; *Haddon House Food Products*, 242 NLRB 1057, 1059 (1979), enfd. in relevant part sub nom. *Teamsters Local 115 v. NLRB*, 640 F.2d 392 (D.C.Cir. 1981); and *Loray Corp.*, 184 NLRB 557, 559 (1970).

These remedies are in addition to the Union's right to have access to a list of voters and their addresses under *Excelsior Underwear*, 156 NLRB 1236 (1966), after issuance of the Notice of Second Election.

[5] We also shall modify the judge's recommended Order in accordance with our decisions in *Indian Hills Care Center*, 321 NLRB 144 (1996), and *Excel Container, Inc.*, 325 NLRB 17 (1997).

man, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening to move its product to Boston or close its plant if Congreso de Uniones Industriales de Puerto Rico should win the election.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Supply the Union, on its request made within 1 year of the date of this Decision and Order, the full names and addresses of its current unit employees.

(b) Within 14 days after service by the Region, post at its San German, Puerto Rico facility, copies of the attached notice marked "Appendix."[6] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since June 20, 1994.

(c) During the time the notice is posted, convene the unit employees during working time and permit a Board agent, in the presence of a responsible management official of the Respondent, to read the notice to the employees.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps the Respondent has taken to comply with this Order.

IT IS FURTHER ORDERED that Case 24–RC–7640 is severed and remanded to the Regional Director for Region 24 for the purpose of conducting a second election pursuant to the direction set forth below.[7]

[Direction of Second Election omitted from publication.]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
> To form, join, or assist any union
> To bargain collectively through representatives of their own choice
> To act together for other mutual aid or protection
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten our employees that we will move our product to Boston or close our plant if Congreso de Uniones Industriales de Puerto Rico wins the election.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL supply the Union, on its request made within 1 year of the date of this Decision and Order, the full names and addresses of our current unit employees.

WE WILL, during the time this notice is posted, convene our unit employees during working time and permit a Board agent, in the presence of our responsible management official, to read the notice to them.

WALLACE INTERNATIONAL DE PUERTO RICO, INC. AND INTERNATIONAL SILVER DE PUERTO RICO, INC.

Antonio F. Santos, Esq. and *Virginia Milan-Giol, Esq.,* for the General Counsel.

Pedro J. Pumarada, Esq. and *Yldefonso Lopez Morales, Esq.,* of San Juan, Puerto Rico, for the Respondent.

Nicolas Delgado Figueroa, Esq., of Puerto Nuevo, Puerto Rico, for the Charging Party.

DECISION

STATEMENT OF THE CASE

RICHARD H. BEDDOW JR., Administrative Law Judge. This matter was heard in Mayaguez, Puerto Rico, on December 12-15, 1994, and in Sabana Grande, Puerto Rico, on February 22 through March 3, 1995. Subsequent to a requested extension in the filing date, briefs[1] were filed by the parties.The proceedings are based on an initial charge filed October 21, 1994,[2] and a

[6] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[7] The Notice of Second Election should include language informing employees that the first election was set aside because the Board found that certain conduct by the Respondent interfered with the employees' free choice. *Lufkin Rule Co.*, 147 NLRB 341 (1964). See NLRB Casehandling Manual (Part Two), Representation Proceedings, sec. 11452.1.

[1] The Respondent's motion to exceed the permissible number of pages is granted.

[2] All following dates will be in 1994 unless otherwise indicated.

series of subsequently filed additional charges,[3] by Congreso de Uniones Industriales de Puerto Rico. The Regional Director's consolidated complaint dated December 12, and the cases consolidated by my order allege that Respondent Wallace International of Puerto Rico, Inc., and International Silver of Puerto Rico, Inc., engaged in conduct violative of Section 8(a)(1) and (3) of the National Labor Relations Act because it threatened its employees with plant closure and the transfer of its operations if the Union won a Board-scheduled election; promised to remedy an employee's work claim if he voted against the Union; threatened its employees with unspecified reprisals if they selected the Union; promised an employee improved terms and conditions if he ceased to engage in activities on behalf of the Union; distributed a leaflet implying that a fire a the plant was caused by the Union; and interfered with, restrained, and coerced its employees in the exercise of their Section 7 rights to organize by: showing a movie depicting and linking the Union with violence, fire, and or death, in the same movie impliedly threatening to close its plant if the Union won a Board-scheduled election; in the same movie threatening it employees with loss of benefits if the Union won the election; and, during the same day telling its employees that if the Union came in to the plant it would bring fire, harm, strikes, and violence. Finally, the complaint alleged that Respondent's conduct was so serious and substantial in character that a bargaining order is necessary. The pleadings in the consolidated matters, in Cases 24–CA–7062 and 24–CA–7083 alleges that Respondent also violated Section 8(a)(1) and (3) of the Act when it issued disciplinary warnings to Jose Luis Ayala, Eddie Hernandez and Armando Ayala and imposed more onerous terms and conditions of employment to Jose Luis Ayala by transferring him to the finishing department, because of their union activities.

On a review of the entire record in this case and from my observation of the witnesses, and their demeanor, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Wallace International of Puerto Rico, Inc. and Respondent International Silver of Puerto Rico, Inc., are affiliated business enterprises that hold themselves out to the public as a single-integrated business enterprise and the Board, in *Wallace International of Puerto Rico*, 314 NLRB 1244 (1994), recently found that they constitute a single employer within the meaning of the Act. At all times material, the Respondent has been engaged in the manufacturing of flatware (silver) in its facility located at San German, Puerto Rico. In the course and conduct of these operations and during the 12-month period immediately preceeding the issuance of the complaint, the Respondent purchased and received goods and products valued in excess of $50,000 directly from suppliers located outside the Commonwealth of Puerto Rico. It admits that at all times material it has been an employer engaged in commerce in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[3] Cases 24–CA–07062 and 24–CA–07083 were consolidated with the others by my Order dated February 3, 1995.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent's flatware facility employs approximately 125 production and maintenance employees and its operations are controlled by Merle Randolph, the vice president and chief financial officer of Silvertech Corporation, a company which has been the owner of Respondent Wallace International since 1986. Silvertech operates related facilities in New England and several of the San German employees have worked at those plants. In late August 1994, it acquired another company with operations in Costa Rica. Randolph usually visits the San German plant once a month, and, Jose Arroyo is the general manager in charge of the day-to-day operations in Puerto Rico. Rene Lugo is the production manager and Francisco Lugo is the supervisor of the finishing department. Magali Cruz Vargas was hired on August 5, 1992, and occupied the position of human resources director and health and occupational Safety Manager during the first union campaign. She testified, however, that she was relieved as human resources director in June or July 1993, and since the date has held only the position of health and occupational safety manager.

On December 21, 1992, the Union filed a representation petition in Case 24–RC–7529 to represent Respondent's production and maintenance employees. The Union lost the election, which was held on February 24, 1993, but filed objections. The objections were consolidated with a complaint issued in Case 24–CA–6664 and on March 31, 1994, an administrative law judge issued a decision finding that Respondent violated Section 8(a)(1) of the Act and recommending that the election be set aside. On May 11, the Board granted the Union's request to withdraw the objections and sever the case in order to file the petition in Case 24–RC–7640 and on September 22, the Board issued a Decision and Order reaffirming the administrative law judge's rulings, findings, and conclusions and adopting the recommended order, as modified. See *Wallace International*, supra.

In mid-April, Union President Jose Alberto Figueroa met with several of Respondent's employees and it was agreed that rather than waiting for the Board's decision and the delay of a possible appeal process they would collect new authorization cards and file a new election petition. That same evening cards were distributed among those present who signed them and returned them to the three employees in charge of the collection; Eddie Hernandez, Jose Luis Ayala, and Armando Ayala. At the end of the meeting, these three employees also took home blank cards to distribute among other employees. By May 5, the Union had collected 71 cards and it filed the petition in Case 24–RC–7640. An election was held on June 22, which resulted in 49 votes for the Union, 68 votes against, and 6 challenged ballots out of 123 votes total votes cast.

During the weeks immediately prior to the elections a series of events are alleged to have occurred which are the basis for the various allegations set for in the complaint and listed above in general terms. On Sunday June 19 a fire occurred at the plant and on June 21 and 22, prior to the election, Cruz distributed a leaflet signed by Plant Manager Arroyo which highlighted an accusation that the fire was caused by a "criminal hand" and referred to the coincidental visit of the Union to the community, and to bomb threats and death threats during the prior election. Employees were shown a video by Cruz at the instructions of Manager Arroyo and Attorney Lopez. Approximately five separate showings were given during working hours to groups of about 25 employees each with most of them

seeing it on June 20 and those not available on that day viewing it on June 21.

A few months after the election disciplinary actions were taken against three of the union activists for their conduct on the job. The circumstances concerning these matters and the facts pertaining to the Respondent's preelection conduct and the Union's election objection's will be set forth in more detail as my factual findings in the following discussion of the specific allegations.

III. DISCUSSION

The principal issues in this case arose during the so-called critical period just prior to the election held on June 22, which resulted in the Union's apparently unexpected loss of majority support, after the Respondent had aggressively opposed the Union's organizational efforts.

A. Alleged Violations of Section 8(a)(1)

Threat to transfer operations

Arturo Torres was a machine operator between April 1993 and October 1994, when he voluntary resigned. He testified that Corporate Vice President Randolph gave a speech 2 or 3 weeks prior to the election in which he told the employees about the Company's progress in expanding the cafeteria, and providing privileged like coffee breaks and a pool table, but that some employees were unhappy with the Company and that an election was going to take place. Torres asserts that Randolph told them that if the Union succeeded in winning the election there were other places like Santa Domingo, Costa Rica, and Mexico where people were dying of hunger and that the employees were just fine as they were. Torres admitted that Randolph did not say directly that Respondent was going to move its business to any of the above places if the Union won the election, and he acknowledged the fact that Randolph mentioned that the Company was investing millions of dollars in additional equipment for the plant. However, the General Counsel contends that the underlying message implied that if the Union won the Respondent could always move to Santa Domingo, Costa Rica, or Mexico, where wages are lower.

Randolph testified that the only time he was in Puerto Rico during June was the week of the election from June 20–22, that he had several meetings with employees during that week where he told them about the work that was being done around the plant to make the place better and improve that facility and agreed that he spoke to all the employees about some of the things described by Torres.

Randolph testified that he specifically remembered giving only one speech to the employees, and said that he never mentioned Santo Domingo, Costa Rica, or any other foreign country. This lack of any reference to other foreign countries was confirmed by several other witnesses who were present at that speech and all other witnesses who testified about Randolph's speech placed it on the day before the election. No other witness corroborated Torres' recollection even though others were at the meeting. In view of his apparent confusion over when the speech was given, I find that his recollection of what specifically might have been said is not trustworthy and is too unreliable to be credited over the testimony of other witnesses. Torres' testimony lack any substance that could tend to prove that Randolph made remarks that implicitly threatened that the Company would relocate its plant if the Union won the election. No evidence was presented regarding a similar allegation in the complaint involving a threat to move to Boston by Manager Arroyo.

Efigenio Mejias, Pablo Perez, Hector Figuerao, and Angel Vasquez are all employees of the finishing department and work under the supervision of Francisco Lugo. Mejias testified that the day before the election and on the day of the election, Lugo picked up the silver to put it in the vault and said that he was picking up the silver because if the Union won the election the silver would go to Boston and the plant would close. Lugo's comments were heard by several employees and it was the object of discussion.

Perez testified that the day before the election and on the day of the election, he heard Lugo, when he was picking up the silver to put it in the vault, say that this was getting harder everyday, "If the Union wins, tomorrow this sterling will be in Boston." Perez understood this meant that Respondent would close the plant.

Figueras testified that the day before the election, Lugo was picked up the silver, and stated that if the Union won, the silver would go to Boston. The following morning, when Lugo was taking silver out of the vault, Figueras asked Lugo why he was not taking all of the silver out and Lugo answered that it was because if the Union won, the silver would be taken to Boston. Figueras understood that if the silver went to Boston, they would be without a job. Vasquez testified that a day or two before the election, Lugo, while picking up the silver said that if the Union won the election the Company would take it to Boston and place a lock on the door.

Lugo was asked only a direct leading question by Respondent's counsel as to if he has said anything about if the Union won the election the Company would take the silver to Boston and he answered "no," and when questioned further he testified that he had said nothing similar. He did not explain, in context, any comments he may have made during these occasions. Lugo explained, however, that after the fire he had been instructed to pick up the silver after the employees left and put it in the vault for security reasons. Arroyo testified that he ordered this because of the presence of outside persons investigating the fire of June 19. Lugo also explained that there is a lot of noise around the area, the employees wear earplugs and that the several employees could not all have been heard any statements because of the noise. Lugo admitted, however, that at the time he collected the silver the employees had already finished their work and were cleaning their tables. Lugo then alleged that at the time he picked up the silver the employees had already left, but admitted that there were some employees still around.

Here, I find the testimony of the several employees to be more reliable and trustworthy than that of supervisor Lugo. Lugo's bare denial that he made the statement attributed to him is unpersuasive and his explanations were inconsistent, constantly changing and pretextual. This conclusion is supported by the showing that although he initially answered the General Counsel's questions with a denial that he was involved in convincing employees to vote against the Union or that he received instructions to try to convince certain employees, he thereafter admitted that he had received both written and verbal instructions from Arroyo and Respondent's counsel, Lopez, to talk to those persons that were undecided on against the Union. In this regard the instructions were: "you must concentrate on the employees that are against the Union, and those that might have a doubt, since the employees that openly favor the Union are very

difficult to convince, and are the ones that most probably will file against you some violations against the law when you try to convince them." Lugo admitted that those who were most openly in favor of the Union were Eddie Hernandez, Jose Luis Ayala, and Armando Ayala, and that Figueras had worn both "yes" and "no" stickers.[4] And Although Mejias, Perez, and Vasquez had worn "yes" stickers (in favor of the Union), there is no indication that Lugo's remark was addressed solely to these employees. These employees merely overheard what was said apparently generally within the earshot of several employees and I infer that the remark was made in the presence of an employee that Lugo could have believed "might have a doubt" in accordance with his instructions.

Accordingly, I do not credit Lugo's denial and I find that the credible testimony of the General Counsel's witnesses persuasively shows that Supervisor Lugo said the silver would go to Boston if the Union won the election. This statement was made under unique conditions, as the silver was not handled the way it usually was but was being picked up because of changes in security as a result of the recent fire, however, this reason was not explained to the employees. The threat to move otherwise was not shown to be a personal opinion or of an objective prediction of a probable consequence beyond the Respondent's control. The expression of the threat to move in connection with the unusual collection of the silver just a day before the election would tend to make the Respondent's conduct highly coercive in nature and I find that it is objectionable and unlawful conduct that violates the employee's Section 7 Rights and Section 8(a)(1) of the Act, as alleged.

Promise to remedy an employee's work claim

Arturo Torres testified that after the July 21 meeting addressed by Randolph, he requested to speak to Arroyo. Torres told Arroyo that he was unhappy with the Company because he had suffered an accident (and painful back injury), in March, had reported to the State Insurance Fund, and had yet to receive anything. Torres asserts that Arroyo told him that he understood how he felt and that he would take care of the matter, but that he needed to count on Torres' vote because if the Union won then we were going to be all screwed up. Arroyo concluded by saying that Torres could count on him if Arroyo could count on Torres. Arroyo, denied telling Torres the above, and asserts that Torres approached him not in June, but in July, about the claim and that he told Torres he could not help him. As noted above, Torres was confused about when Randolph had been at the plant, and, accordingly, it is not readily apparent that his testimony is accurate regarding when he spoke to Arroyo about the accident compensation; however, there would have been no point to the asserted promise if the election already had taken place. Therefore, if it occurred, it must have been on June 21. Arroyo testified that he ordered Cruz to prepare a report relative to the alleged accident involving Torres. That report was dated in April and sent to the State Insurance Fund. Arroyo specifically remembers that the investigator for the State Insurance Fund took an oral statement from him in July and that had already occurred when Torres made an inquiry about his claim. Subsequently, by decision dated October 4, the claim was denied by the Fund. The denial of the claim would tend to indicate that no favorable action was taken (to accept company responsibility for the injury) and, under the circumstances, it lends no credibility to Torres' claim that Arroyo promised to help. Otherwise, there are clear ambiguities in Torres' recollection of when the alleged statement was made and I cannot conclude with any degree of confidence that his testimony is reliable. The circumstances tend to indicate that Arroyo's testimony is plausible and inasmuch as I cannot clearly find Torres' testimony to be more credible or trustworthy I must resolve the ambiguity in favor of Arroyo and find that the General Counsel has failed to support this allegation with sufficient and persuasive evidence that would show a violation of the Act, as alleged. Accordingly, I find that the allegation in paragraph 8(a) of the complaint should be dismissed.

Threat of unspecified reprisals

Torres was involved in an alleged incident that is related to that discussed immediately above. He testified that at 8:30 a.m. the day before the election, he was summoned to meet with Cruz in Rene Lugo's office. Cruz asked Torres how he was doing and he replied that he was hanging in there and that he was working in spite of the pain he had. Torres alleges that she said she understood the problem regarding the claim before the State Insurance Fund. Cruz allegedly then said that an election was going to take place, they needed to count on his vote, and that should he vote for the company they would in turn resolve his problem at the Fund. Cruz then asked Torres if he had been there for the prior election, he answered that he had not, and Cruz then said that what happened last time had been pretty messy and that she did not want that to happen again. Finally, Cruz purportedly told Torres that the Union liked to cause damage, fire, strikes, and violence.

Cruz denied making these statements but agrees that she did have a conversation with Torres regarding the issue of the State Insurance Fund, but several weeks after the election and not the day before the election. Cruz further testified that Torres requested her to change her report to the State Insurance Fund and that she told him it was impossible because she had investigated and collected information from different persons, that the investigation was well done, and that it was up to the Fund to decide his case. She also noted that she was showing the video to employee's since she arrived at the plant and didn't meet with any employees individually to talk about regular work problems.

Again, the circumstances and sequence of events described by Torres tend to lack continuity and plausibility and I am not persuaded that Torres accurately places his discussion about the insurance fund with Cruz on the day prior to the election. Otherwise, I find that Torres' testimony lacks sufficient probability and reliability to persuade me that his version of events is more credible than that of the explanation given by Cruz. Under these circumstances, I cannot find that the General Counsel has carried his burden of proof and accordingly, I find that the allegation in paragraph 8(e) of the complaint also should be dismissed.

Promise to improve conditions of employment.

Efigenio Mejias testified that on the day of the election he went to the bathroom to wash his hands and he found there was no water. At that moment, Randolph walked in. Mejias showed Randolph his hands and told him "look Randolph the way they have us. We don't have water to wash our hands." Mejias testified that Randolph replied, "If you remove the yes sticker you have on your shirt and you place this one on (a no sticker), I will get water for you." Meijas left with his hands

[4] G.C. Exh. 97 is a picture of Figueras with Safety Director Cruz in which he is in Rene Lugo's office wearing a "Vote No" sticker.

dirty and went to an area where he washed his hands with the water they have to wash the silver. Moments later Randolph came by and asked Mejias if he had been able to wash his hands.

The Respondent introduced a certification from the Aqueduct and Sewer Authority certifying that the only day it cut off water to the plant during the week of the election was on Friday, June 24. Manager Arroyo testified that the Friday after election was the only day that week that the plant's water supply was affected. There is no other corroborative testimony regarding the water in the bathroom on June 22 by any other employee nor is there any evidence that there was some local cause for the water to be affected at that specific location.

Randolph, who knew Mejias well enough to call him by his nickname, denied that he was at the plant in June when the water was off and he denied having any such conversation with Mejias on the day of the election.

As discussed in several of the other instances above, the factual setting for the alleged illegal remarks described by the General Counsel's witness does not appear to be accurate or reliable and I find nothing that shows or persuades me that Mejias' testimony is more plausible or more trustworthy than that of Vice President Randolph, whose testimony is at least equally if not more persuasive than that given by Mejias and, accordingly, I cannot find that the Respondent is shown to have violated paragraph 8(f) of the complaint, as alleged.

B. Supervisory Status of Magali Cruz

Cruz was involved in some of the allegations heard in the prior case during August 1993, and was an admitted supervisor at the time of the alleged conduct prior to the first election. She started to work for Respondent on August 5, 1992, and at the time she was hired, she occupied the position of human resources director (or personnel director) and health and occupational safety manager, and also was chief of security. She asserted she was relieved as human resources director in June or July 1993. Cruz received a bachelor's degree in business administration specializing in industrial management in 1988. She held a position as general manager of a company employing 65 employees while completing her degree and as a traffic and safety manager for another company until 1990, when she went with another company as operations manager and where she was also in charge of health and safety (supervising between 15 and 25 employees), before moving to the Respondent.

Cruz testified that she was personnel director only until March 1993 or the summer of 1993. Cruz receives a salary that was increased after the first 6 months and which was not decreased after she relinquished the title of personnel or human resources director. Up until the time of the hearing no one held that title and, for the time being, General Manager Arroyo was said to perform the functions

Here, I find that an example of how functions were handled would be apparent from the communication to the Insurance Fund (in the Torres matter, discussed above) where the investigation and letter were taken care of by Cruz and signed by Arroyo.

Section 2(11) of the Act defines a supervisor as:

> any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge assign, reward, or discipline other employees, or responsible to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is not necessary that an individual possess all the indicia identified in Section 2(11) of the Act to be considered a supervisor. Here, Cruz admittedly held a managerial position as health and safety manager, however, she answered, "No, I don't have that authority," to a series of leading questions by Respondent's counsel which asked if she had the specific authorities listed in Section 2(11). Here, the mere fact that Cruz no longer held the title of personnel director is not controlling, especially since many of the employees had dealings with her when she had that title and still equate her role in the Company with that position. Otherwise, the General Counsel has shown that on May 5, 1994, Cruz participated in a disciplinary meeting that was held against several employees. She was an active participant in the meeting and was not just a spectator and she prepared the report (at Arroyo's direction), and a copy of it was placed in the employees' personnel file. Also, on October 23, 1993, Cruz participated in another disciplinary meeting against an employee and prepared a report of the disciplinary meeting for the employee personnel file. Documentary evidence also reflects that since the summer of 1993, Cruz has issued various memoranda to employees informing them about disciplinary procedures and the rules of the company and advising employees that violations to said rules entail disciplinary measures. She also gives training orientation and copies of the safety and personnel manual to new employees.

The mere fact that the plant manager has been placed in a position to sign off on her actions is not controlling. No one has really replaced her as personnel manager and her functions as health and safety manager clearly are not merely clerical and they allow her to make independent judgments in directing at least the health and safety matter affecting employees. Under these circumstances, I find that the overall record shows that Cruz exercised functions as a statutory supervisor under Section 2 (11) of the Act, and, accordingly, her conduct in relation to Respondent's employees properly is attributable to the Respondent.

In the alternative, it is concluded that these factors also show that the Respondent has placed Cruz in a position such that employees could reasonably believe that she speaks for management because it uses her to relay information to employees and to inform employees of its rules and regulations; directs employees to address their complaints or problems to her and uses her to inform employees of personnel decisions, Cruz's statements, and actions also are consistent with those of the employer, and accordingly, her conduct is that of an agent and, as an agent, her conduct is attributable to the Respondent.

C. Warnings and Transfer of Employees

Eddie Hernandez was the main union leader and authorization card solicitor and he collected cards from other card collectors. He distributed union leaflets (in view of Production Manager Lugo) and spoke to employees regarding the Union. Health and Safety Manager Cruz acknowledged that Hernandez as well as Jose Luis Ayala and Armando Ayala (both card collectors), were also identified with the Union from the first election campaign and she acknowledged that she had seen them with Union President Figueroa at the "Aqui Me Quedo" bar and was in a position to see them with the General Counsel or one of the Board's agents.

In a proceeding involving discharge, disciplinary warnings, or changing conditions of employment, applicable law requires that the General Counsel meet an initial burden of presenting sufficient evidence to support an inference that the employee's union or other protected concerted activities were a motivating factor in the employer's decision to alter their conditions of employment or to terminate them. Here, the records shows that the Respondent was well aware of union activity, that it also engaged in certain unfair labor practices, and that it identified these three employees as union activists.

Under these circumstances, I find that the General Counsel has met his initial burden by presenting a prima facie showing, sufficient to support an inference that the employees' union activities were a motivating factor in Respondent's subsequent decision to give them warnings or to alter their conditions of employment. Accordingly, the testimony will be discussed and the record evaluated in keeping with the criteria set forth in *Wright Line,* 251 NLRB 1083 (1980), see *Transportation Management Corp*., 462 U.S. 393 (1983), to consider Respondent's defense and whether the General Counsel has carried his overall burden.

On October 26, 1994, Hernandez was given a written warning because he failed to follow the specific instructions given to him by his supervisor, Manuel Cruz.

Hernandez admitted that he questioned Cruz's orders because he wanted to know why he had to do the job the way Cruz instructed him. Although he claims that Cruz never told him the way he wanted the work to be done, he admitted that when Production Manager Rene Lugo questioned him he explained the manner in which he had been taught to do the work. Manager Lugo testified that he was approached by supervisor Manuel Cruz who informed him he had a problem with Hernandez and that Hernandez refused to do a job the way Cruz asked him to do it, claiming it was not part of his job. Lugo further testified that when he went to talk to Hernandez, Hernandez told him that he was not going to do work because "he would not do it the way that Mr. Manuel Cruz was asking him to do it." Lugo instructed Hernandez that it was an order that the supervisor was giving him and that he had to follow it.

Lugo left Hernandez to give him a chance to "think it over" and when he later returned he saw Hernandez was performing the work slowly and "was not doing it gladly." There was a great deal of testimony concerning the particular pattern of silverware involved and past and current practices of the Company on who and how many persons would work on polishing a particular piece (Hernandez had previously polished the front and back only and another employee had polished the top area where a particular design was located, on other different design patterns he would polish the complete design area), however, I find it to be basically irrelevant. Here, I credit's Cruz's testimony that he instructed Hernandez to polish the full piece and that Hernandez essentially ignored him. After investigating the specific incident, Lugo informed General Manager Arroyo and it was mutually agreed that a warning should be given.

As pointed out by the Court in *Transportation Management Corp*., supra:

> [a]n employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected concerted activity conduct.

Here, I am persuaded that the Respondent has met its burden and I conclude that Hernandez would have received a warning regardless of his union activity.

Supervisor Cruz appeared to be a credible witness and I believe he accurately recalled that he specifically ordered Hernandez to polish a certain pattern completely but that Hernandez refused to do the work as Cruz was requesting him to do it because he claimed that "that was not the way it was done." Cruz explained to him: "that I wanted him to do it that way because it was the easiest way for the job to go further down," but Hernandez said that was not his job and Hernandez thereafter returned the box of unfinished silver to the table from which assignments are made and apparently started to work on something else. At that point Cruz brought the matter to the attention of the production manager. Supervisor Cruz was not shown to have any union animosity and his reaction to the insubordinate conduct by Hernandez appears to have been motivated only by a legitimate reason. Management otherwise is not shown to have taken any other actions against Hernandez that would tend to show some pattern or plan to retaliate against him and I find that management's support of a line supervisor by issuing a warning in an apparently clear case of insubordination was within its powers of managerial discretion and does not rise to the level of an unfair labor practice under these circumstances. Accordingly, I find that the General Counsel has not shown that the Respondent violated the Act as alleged and this portion of the complaint will be dismissed.

On November 2, 1994, a written warning was issued by Manager Arroyo to Armando Ayala in relation to his pattern of improper conduct which directed him to desist from continuing with his "constant remarks and actions" which ". . . create a negative work environment that prevents your co-workers from carrying out their tasks satisfactorily." The warning was issued after an investigation was made by Arroyo after a complaint was made by a coworker, Ramon Zaragoya.

Ayala admits that near the end of October he had stopped and looked inside the drawer at Zaragoya's work table but asserts that he did not open it and that he continued back to operate a machine. Zaragoya testified that he has a drawer with personal materials and that when he returned from checking something he surprised Ayala looking in the drawer. When he confronted him, Ayala retorted "look go back to work and stop loafing" and made a gesture with his fist. This occurrence was the cumulation of a series of humiliating and disrespectful actions by Ayala towards Zaragoya. Zaragoya was upset and felt he couldn't tolerate this conduct and went with Ayala to Arroyo's office where he complained about the harassment and said it was making him sick and that if it continued he would have to resign. Ayala defended himself and Arroyo said he would investigate. Arroyo received confirmation of Zaragoya's complaint from three employees including Elmer Caraballo, an employee who was in the same room with Ayala and Zaragoya. For the last 3 years Caraballo had been the "assistant to the supervisor" for the area, and acted as the person in charge if Supervisor Roberto Oliveras was gone. Caraballo had observed abusive conduct by Ayala towards Zaragoya several times a day and Zaragoya has complained to him about being harassed and mistreated by Ayala. Several months prior to the election Caraballo told Supervisor Oliveras about Ayala's conduct but he didn't know if anything further was said or done until after the complaint in October, when he was questioned by Arroyo and told him about the harassment he had observed.

Based on his investigation Arroyo decided that a warning was necessary so that Ayala would desist from that type of conduct and so that Zaragoya could have a work environment free of harassment. I credit Arroyo's testimony that he didn't act on the problem earlier as he didn't know about it. Otherwise the fact that Supervisor Oliveras was aware of a potential problem does not rise to the level that would indicate a sudden discriminatory motivation because action was taken after the affected employee made a personal complaint. The investigation appears to have been fair and to support the conclusions and the "admonishment" sent to Ayala, namely:

> Should you continue with this behavior pattern and engage in this type of wrong or similar faults to those hereby indicated, we will be forced to take more severe disciplinary measures, which can include permanent separation from your work.
>
> However, we are sure that we can count on your help and so that you may continue working in our Enterprise and assist us to forge a better future for everyone.

This warning does not appear to be extreme or indicative of any retaliatory motivation and under these circumstances, I find that the Respondent has demonstrated a legitimate reason for its actions and it has persuaded me that this written admonishment was justified and would have been issued even in the absence of Ayala's active support for the Union. The record otherwise fails to show that the Respondent violated the Act in this respect, as alleged, and accordingly, this portion of the complaint will be dismissed.

Jose Luis Ayala, a machine operator, testified that on September 28 the air compressor that feeds the machines in his department (the acid room), broke down. As a result, Supervisor Pedro Ramos ordered the four employees whose machines were linked to the compressor to perform other tasks. Some of the employees were assigned to paint some machinery but Ayala was assigned to pick up some heavy metal pieces that were in the floor. Ayala, who previously had an operation on his knee, tried to perform the work but complained to Ramos that he could not do the work assigned to him because he still had knee problems, and asked to be assigned to do some other task. Ramos went to speak to Arroyo and it took him approximately 4 minutes to speak to Arroyo and return to Ayala. In the meantime, Ayala had returned to his machine and turned it on. Ramos asked Ayala who had authorized him to turn it on. Ayala told him that no one had authorized him but that he had gone back to his machine and noticed that there were 70 pounds of pressure and as a result, he had decided to turn it on. Ayala further told Ramos that he thought there would be no problem in turning on the machine if it had pressure because on normal days, when the employees arrive to work, no one tells them when to turn the machine on. Ramos told Ayala to turn off the machine (which he did), and Ramos took Ayala to Arroyo's office, alleging that he had committed two violations: refusing to do the work assigned to him and working on the machine without authorization. At the office, Arroyo told Ayala that he was not going to give him a warning for refusing to do the work due to Ayala's knee condition. However, Arroyo gave Ayala a warning for turning on the machine without authorization. Ayala then spent the rest of the day cleaning casting (while one who had been on that work did the bending work Ayala couldn't do because of his knee), and the machines otherwise were not restarted that day.

Ramos testified that he considered that Ayala was risking safety by returning to the acid room and starting his machine and, under the circumstances, I agree that the Respondent had a legitimate reason to believe that Ayala was insubordinate and had placed himself and his machine at risk of damage. The Respondent gave him a written warning that let him know that what he did was wrong and that he must modify his behavior, a reaction that I am persuaded would have occurred regardless of Ayala's union support (he testified for the Union in the prior hearing), and his card collecting activities several months earlier. Accordingly, I find that the General Counsel has not shown that the Respondent violated the Act in this respect, as alleged, and this portion of the complaint will be dismissed.

On October 17, Ayala was told to go to Arroyo's office, where several supervisors (including Rene Lugo, Pedro Ramos, and Roberto Oliveras) were present. Arroyo asked Ayala if he wanted someone to be present and Ayala asked for employee Rafi Matos. Arroyo then told Ayala that from that day on Ayala was going to the finishing department because where he was at he was not producing. Ayala argued that the kind of job he had to perform at the acid room related more to quality than to production, that he had not requested the change and that he felt good where he was. Arroyo then told him that he was transferring him because a sandbuffer had resigned and he was experienced at the job. Ayala argued that he had more seniority than other persons in the acid room and asked why they were choosing him rather than someone else with less seniority. Arroyo then told him that he was being transferred because and Supervisor Ramos had had problems and Arroyo had to assure each one a good working area. The conversation ended and Ayala was transferred to sandbuffing.

Ayala also testified that since then Respondent had failed to give him a chair to sit down despite his having asked for it. He asserts that the lack of a chair to sit down caused him to loose about a month of work where he had to go to the State Insurance Fund to receive treatment. Additionally, due to his leg condition, he has been suffering a lot of pain having to work all day standing up. He admits that Respondent did prepare a "stool" for him to rest his leg, however he asserts that the prolonged hours standing up are onerous.

Arroyo testified that he ordered the transfer because it solved several problems, i.e., filling the need for an experienced sandbuffer, avoiding further personality conflicts between Arroyo and Supervisor Ramos in the acid room, and providing continued employment for Ayala (who was hired by Arroyo). Arroyo testified that the transfer did not affect Ayala because there was no change in his hourly rate, nor were his benefits or other conditions of employment affected in any manner. He also testified that:

> [w]hen I ordered that Mr. Jose Luis Ayala be transferred to the Finishing Department he told me that if I was doing that so that he would resign he was not going to resign and that the doctor had told him he had to have his leg elevated.
>
> I immediately went to the Finishing Department and I inspected the area where Mr. Jose Luis was going to work and I ordered that a bench be built so that he could place his leg. So, there is no way for Mr. Jose Luis Ayala to do the work in this manner. He could not work this way, standing. So I must have given Mr. Jose Luis Ayala his chair.

Although employee Pablo Perez and Efigenio Mejias testified that four employees, including Ayala, do not have chairs in

the sandbuffing department other credible testimony indicated that chairs are available and that it may be a matter of choice if one "has" or if one uses an available chair. Otherwise, the record shows that Arroyo made a specific effort to accommodate Ayala with a bench and there is no indication that Ayala made further efforts or complaints to Arroyo or to communicate to the Respondent that there was a continuing problem or that he needed a specific "chair" to somehow moderate his working conditions. Under these circumstances, I again find that the Respondent has demonstrated a legitimate reason for its actions and it has persuaded me that this transfer would have been occurred even in the absence of Ayala's active support for the Union. The record otherwise fails to show that the Respondent imposed more onerous working conditions in retaliation for this employee's union activities or that it violated the Act in this respect, as alleged, and accordingly, this portion of the complaint will be dismissed.

D. Video, Memo, and Statements Linking the Union with Violence, Fire, Death, and Related Threats

On June 20, Magali Cruz, as a supervisor and agent of the Respondent and at the instructions of Manager Arroyo and Yldefonso Lopez (Respondent's co-counsel) showed a video during working hours to all employees in 5 different groups of approximately 25 to 30 employees each. Most of the employees viewed it on June 20 and the remaining ones viewed it on June 21. The unseen narrator of the video was Counsel Lopez.

The Respondent contends that a review of the script of the video shows that the film is a documented historical account of past labor unrest in Puerto Rico. It includes sequences of the Eastern Airlines' union strike and of the fire which occurred at the Dupont Plaza Hotel, and a reference of the "Hipodromo El Comandente" racetrack fire which occurred while the Union (the Charging Party) was trying to organize the jockeys. Also, the film narrates the history of the Union, including a review of activity of the Union in various companies, such as Bacardi, and it also brings up the case of the *U.S. Secretary of Labor, Elizabeth Dole v. Antonio de Jesus and Arturo Figueroa*, former president of the Charging Party, in which the Court prohibited Figueroa from continuing to manage the Union. It further argues that the video presents only historical facts that do not constitute a threat or even a misrepresentation and that unless a statement may clearly be understood as a threat of reprisal or is explicitly coupled with such threats, it is protected concerted activity by Section 8(c) of the Act which provides:

> (c) The expressing of any views argument, or opinion . . . shall not constitute any evidence of an unfair labor practice under any of the provisions of this subchapter, if such expression contains no threat of reprisal or force or promise of benefits.

Here, in addition to the statements made in the video (see G. C. Exh. 3(a) the translated script of the video), we also have an accompanying visual communication (as reflected in the G.C. Exh. 2), and both must be considered in evaluating the impact of the total viewing and listening affect on the employee's.

Towards the end of the video Respondent, through the narrator and other speakers, statements are made that tend to link the Union with violence, fire, and death. Page 8 of the script reads:

> (Narrator Lopez): ". . . Let's see what happened thanks to the Union.
>
> (a voice): There was a union there of those who called themselves was it Congreso de Uniones Universal? And then there was a struggle between the Teamsters Union and them, one of them wanted to leave and the other one wanted to get inside. And when were so many problems that cars were overturned and all this (took place) at the entrance and they did not let people in.". . . . "When I returned to Vega Baja it was when I heard the saying that everything was closed."

At this point as the video began to depict scenes of various fires at a plant, at a stable[5] and the fire that occurred at the Dupont Plaza Hotel (in 1988), the verbal message of the script was as follows:

> [Narrator Lopez]: The CUI (Congresso de Uniones Industriales) might possibly be selling itself now like a pacific Union. Like a quiet Union. However, all of us know that the CUI President, Jose Alberto Figueroa Rios was accused of assault recently at the courts. Why is it that this Union is hounded by violence? At the Gayley plant burned materials were found many years ago. And what about this, ...
> [A reporter]: Do you have knowledge of an assembly(referring to a union assembly) that was being held today at 2 in the afternoon?[6]
> [A voice]: I had an idea, I knew that there was going to be an assembly but I do not know what they had agreed to.
> [Another voice]: There was an explosion there, we stayed inside, I broke a glass there and jumped and fell down. And there many many fellow workers inside there locked up and we do not know...
> [Narrator Lopez]: The Dupont Plaza case is an ominous case in the history of Puerto Rico and that of the Unions. However, some of you'll remember the famous case several years ago on the 70's where about 40 horses were set on flames at El Comandente Racetrack, at that same time, by coincidence Congreso de Uniones Industriales was trying to organize the horse riders. Let's hear what happened there.
> [A voice]: Many people came in to find out other people some unions or union congresses something like that came and I remember that some horses died there whose were valued a lot of money and also there was someone at the stable who was also going to burn and the horses came out burning in flames, they broke the fence, the guy who was sleeping left through the same place running after a horse who was burning in flames and he saved his life. It seems that there was a hand from the outside and some bottles were thrown in there of those which set things on fire. That was a barbaric act that no one can imagine of.

The General Counsel also points out that at various places both the script and the picture imply that joining the Union might cause the plant to close. At the beginning of the video, while a closed plant is being shown, the following appears on the screen:

> This is Timex Watch. It no longer exist[s]." At that point the narrator is saying: "However, when everything goes well when that combination is operating to perfection, a third party

[5] The stipulated evidence shows that although the movie referred to the fire at the plant as the fire at Gailey Manufacturing and the fire at the stable as the fire at the racetrack, in fact none of the fires depicted in the movie occurred at Gailey or the racetrack.

[6] At this moment in the movie they are carrying a man in a stretcher out of the fire that occurred at the Dupont Plaza Hotel.

can come to interfere, a third party who comes after what it can gain. That third party is a union.

Then, at page 3 of the translated script the narrator states:

> However, you have to keep in mind that when negotiations start everything is negotiable; there is a risk of losing some or all of said benefits.
>
> How big is that risk? Let us listen to some interviews dating back around ten years where people who involved in labor movements are going to offer us their experience in these matters.
>
> Voice #2
>
> Employee:
>
> Then a strike arose there because of foolishness. . . . then we start losing customers and on the way also lost my savings.
>
> Voice #3
>
> Employee:
>
> That's how things go, the plant was all right, it was doing very well. It was doing extremely well. Then all of a sudden the Union came in, promised us that the plant would not close, but it came in and was closed you know, I do not know why it closed down then but I know that it closed.

Page 4 of the translation refers to Eastern (Airlines) deciding to close its doors because of the strike of its pilots and on page 5 Puerto Rico Glass is linked to former Union President Don Arturo Figueroa and it is stated that the company left "precisely due to the labor problems that occurred many years ago."

The video and the script also contain references to benefits and the complaint alleges that it the Respondent thereby implies a loss of such benefits.

At the beginning of the movie, while speaking about the benefits the employees have, printed captions on the screen show the following: "[I]s the company giving me good benefits" Will I be able to keep these benefits I already have if the Union comes in?" At this point the narrator says, "However, you have to keep in mind that when negotiations start everything is negotiable; there is a risk of losing some or all of said benefits." The narrator asks: "How big is that risk?" and a voice answers: "Then all of a sudden the union came in and promised us that the plant would not close, but it came in and was closed you know. I do not know why it closed down then but I know that it closed. Then now I do not have a car, I have been unemployed for 7 months and I am unable to find work around there because things are bad. I am working on odd jobs to be able to feed my family, you can guess." At the end of the movie the narrator reminds employees of the benefits they enjoy and states:

> You, who enjoy higher fringe benefits than the majority of the employees of the area and higher than those required by law, you who enjoy the annual salary increases even when the economy is downward, you who shoulder to shoulder have been successful in making us what we are, do not allow a stranger from Cantaño (the town where the Union has its offices) come in to harm you.

As noted above, a fire occurred on the roof of the plant on June 19, the day before the majority of the employees were shown the video. The ultimate conclusion of the Criminal Investigation Corps was that the fire was the result of negligence on the part of some employees of a subcontractor that were sealing the plant's roof. However, on June 21 and June 22, Cruz distributed a memo from Arroyo to all the employees. The memo was accompanied by a copy of the report that was attached to the leaflet highlighted with a circle item that read "criminal hand" as the cause and deemed it intentional in the opinion of the "Fire Marshall."

The full text of the memo is as follows:

> As all of you know, a fire of unknown origin, but extremely mysterious, burned the roof of Plant number 2 of our company last Sunday, Fathers' Day. The firemen and the police were immediately called and the matter is being investigated. The Puerto Rico Firemen Service has submitted a preliminary report in which they stated that the fire was due to a criminal hand.
>
> However without adjudicating responsibilities, our attention is called to the fact that this type of incident again coincides with the visit of CUI to San Germãn. this had never happened at Wallace.
>
> Like last year, when we received bomb threats and death threats during the election period; when there were acts of violence during the campaign of the CUI at McGraw (sic) and, when a co-worker's car was vandalized, this year our place of work burned in flames. The place where we earn our daily bread for our families could have been reduced to ashes.
>
> However, we are not going to be intimidated. We are going to protect you like we have always done. We are going to watch over the safety of all of you and we are going to assure ourselves that nothing destroys what we have.
>
> ALWAYS COUNT ME!

The Respondent asserts that Arroyo's use of the phrases "of unknown origin" and "without adjudicating responsibilities" shows that the memo never makes an accusation directed at the Union or mentioning that the Union was responsible. It also asserts that on the afternoon of the day before the election, Arroyo made a public statement for a local television station in which he made clear that he could not accuse anyone relative to the fire that occurred at the company premises, and that the interview was broadcast on the 6 o'clock news in the Mayaguez area, which includes San German and nearby towns, where most company employees live.

The police report of the incident dated June 29 notes that Miguel Colon, state fireman and fire investigator who was sent to investigate the fire, reported that an area with cards and sealing tar was smoking and it was presumed that it was negligence on the part of the company engaged in sealing the ceiling (or roof) in leaving containers of asphalt behind where the heat set them on fire.

Alexander Riveria testified that he was acting sergeant and in charge of the fire department in San German at the time of the fire and that he prepared a report. The report he prepared dated June 20, did not have the words "criminal hand" "opinion fire Marshall" and the area was not circled. Miguel Colon, a fire inspector and fire Marshall, testified that he investigated the fire with Sergeant Rivera the day after the fire and that he ordered that the word "apparent criminal hand" be crossed out, and that "criminal hand" be written but he did not circle it. Two days after the fire, Manager Arroyo personally asked Rivera for the report but Rivera declined because at that point it

was not in accord with procedures to release it. Colon testified that the Company's lawyer or factory administrator asked him for a copy and that the department authorized him to give them a copy and that it was hand delivered (apparently from San Juan to San German), and the words criminal hand were not circled.

Arroyo testified that he personally went with Colon to the roof of the building and spoke with him at that time and that Respondent's counsel, Lopez, was at the plant but did not go with them to the roof. He said that he requested the report over the phone and he or someone went to the fireman where the report was left in an envelope on his desk. He said he did not circle the words and did not know who did but agreed that he prepared the memo given to employees and that he showed it to the Company's lawyer and attached the report "because it was an official document from the fire Marshall." Arroyo also testified that on June 20 he asked none of the firemen or other investigators about the cause of the fire, that no one told him any cause, and that the first information came at some unknown time on June 21 after he had called seeking the report and after he finally saw the document after learning that the fire Marshall had "left an envelope for me there" (at the local fire department).

Hector Figueras testified that on June 21 he asked Magali Cruz about money for safety shoes. When Cruz told him to speak to Arroyo, Figueras told Cruz he already had and Arroyo told him he would see what he could do. Figueras said he told Cruz that this was one of the reasons he was going to vote for the Union, because the Company wouldn't solve the employees' problems. Cruz immediately said:

> Did you see the video? Did you see what Union give you? Did you see the fire at Dupont Plaza, at El Comandante, the fire at the factory? And, that what the unions would be were strikes. [Sic.]

Cruz denied ever making this statement but admitted that she had a conversation with Figueras about the safety shoes about 2 weeks prior to the election.

Figueras testified that the event occurred at 2:10 p.m. at the afternoon break and therefore I find that Cruz's testimony regarding her activities (she may have been busy showing the video in the morning when Torres claims he spoke with her and, as noted above, I did not credit Torres over Cruz on that matter), has the ring of an "alibi" and it does not persuasively support her claim that she was too busy or unavailable to have had the conversation on June 21. Cruz also explains in detail why she wasn't in her regular office, yet Figueras did not claim he was at her office. She also testified that:

> A. What I meant with this was that ever since I separated from my ex-husband in February of 1994, and afterwards, I got divorced, once this man found out, Figueras, he started to make amorous approaches and he invited me out, invited to have dinner, saying he wanted to get married with me, that he liked me a lot. And for me that is unacceptable conduct within the Company.
>
> So I tried to talk to him strictly what is necessary and related to work. I avoid him unless it is related to safety topics.

Conversely, General Counsel's Exhibit No. 97 is a picture showing Figueras and Cruz smiling and sitting in separate chairs, but closely together with Figueras wearing a "No" sticker.

Under these circumstances, I am persuaded that Cruz was not as aloof from Figueras as her testimony would indicate and I believe that she considered Figueras to be a person who had "doubts" about how to vote (and there is evidence that Arroyo and Counsel Lopez instructed supervisors to concentrate on employees that might have a doubt) and I find it likely that she took the opportunity to respond to his remark to remind him of what had been communicated in the video he had seen recently. Accordingly, I credit Figueras' testimony in this regard and I find that Cruz's statement is evidence that the Respondent attempted to make the employees believe that if the Union won the election it could result in fires and strikes and I further conclude that this is one added cumulative factor that should be evaluated along with Arroyo's memo, the scenes in the video, the script of the video and the actual occurrence of a fire just before these other events took place.

Here, the Respondent attempts to minimizing the effect of its antiunion video and compares it with the showing of a historic antiunion film "And Women Must Weep" where in *Little Press of San Antonio,* 211 NLRB 1014 (1974), the Board found that the showing of this movie was not a per se violation of Section 8(a)(1).

As described by the Court in *Southwire Co. v. NLRB,* 383 F.2d 239 (5th Cir. (1967)), the contents of "And Women Must Weep," included:

> Among other baneful events, the film shows picket line violence, the minister being jeered, smashed windshields, slashed tires, and upturned automobiles, all caused by the majority members of the Union. The minister's wife is threatened by an anonymous caller who announces that her home will be the next to be bombed. The minister is shown with a rifle, sitting through the night, in an effort to protect his family. The climax of the fray is reached when the strikers fire into the trailer home of a dissenting union member and a bullet strikes his baby in the head. The film closes with the end of the strike and with the announcement that the baby will live. The closing words of the narrator are: "All you have to do is ask yourself, Could my town be next? And if you think that the answer of what happened to us couldn't happen to you, remember that is what we thought in the beginning. Must you wait to come face with tyranny as we did."

The court upheld a conclusion that the showing of the film was protected by Section 8(c) of the Act, because the evidence was insufficient to establish that the use of the movie constituted a threat of reprisal or force.

The General Counsel, on the other hand, submits that through the described acts Respondent depicted and linked the Union with violence, fire, strikes, and threatened plant closure and threatened loss of benefits and thus violated Section 8(a)(1) of the Act, citing principally *Kawasaki Motors,* 257 NLRB 502, 510–511 (1981), as well as *Gissel Packing Co*., 395 U.S. 575 (1969); *299 Lincoln Street, Inc*., 292 NLRB 172, 173 (1988); and *Coronet Foods*, 305 NLRB 79 (1991).

Section 8(c) of the Act, allows campaign propaganda and strong antiunion statements. However, there are limits and when the communication also contain such statements as threats of reprisal and the promise of benefits *(Gissel*), closure of the business *(299 Lincoln Street),* linkage of the Union to bomb threats and closure *(Kawasaki*), and in a slide presenta-

tion threatened closure of a department *(Coronet*), the line is drawn between permissible predictions of expressed beliefs or probable consequences predicated on the expression of objective fact and illegal communications that must lose their protected status.

Here, the Respondent has gone beyond puffing or mere exaggeration in the various communications to employees and it has effectively misrepresented the linkage between several factual scenes of fires, violence strikes, and plant closures with the Union specifically involved in the election. The video and script also engage in the game of guilt by association with statements about profiltering by union officials, plant closures, violent strikes, and fires, and so forth, when the Union was headed by Don Arturo Figueroa, the father of Alberto Figueroa, the Union's current president and when the Unions involved were generally not the same union involved here. Here, the video shows news clips of one fire, then a graphic view of a twitching body on a stretcher being carried away then the smoke of fire at the Dupont Plaza, then the race track along with violence at the race track that include commentary about fires and a statement "by coincidence" the "Congreso de Uniones Industriales" was trying to organize the horse riders at that time.

Although the standards of allowable propaganda applied by the Board may be rather broad as indicated by the decisions involving the "And Women Must Weep" movie decisions, the video and script here are sufficiently direct in the implied linkage of a specific union to acts of violence and plant closure that it lacks even a moderate degree of objectivity. Despite the Respondent's disclaimer's that it has carefully avoided making specific accusations, I find that the clear import of the pictures and the statements constitutes propaganda that includes unmistakable threats and unmistakable misrepresentations that unobjectively link the specific union involved in the forthcoming elections with fires, violence, strikes and plant closure.

The effect of the showing of this particular video on June 20 and 21, with the election held the next day on June 22, is heightened by the actual occurrence of a fire on the roof of the Respondent's plant on Sunday, June 19 (a non-workday). Here, the Respondent was not content to let the employees make their own evaluations of the actual fire and the fires shown and alluded to in the video. Instead, it engaged in an inordinate effort to quickly establish a worse case scenario and it gave employees a memo that linked the plant fire with the Union's organizing campaign and linked the Union with other acts of violence during campaigns. Then it emphasized this by stating (with the qualification that it was a "preliminary" official investigation) that the fire was due to a criminal hand and attached official document with that accusation highlighted.

Plant Manager Arroyo's testimony inconsistently disclaims that he had any interest in learning the cause of the fire, yet he immediately put out an accusatory memo which in turn is obviously and intentionally linked to the Union campaign. Here, the precipitous opinion that the fire was caused by a criminal hand is totally inconsistent with the final results of the investigation and police report. It would also appear to be insupportable even as preliminary speculation given the fact that a contractor was working with and had left inflammable roofing asphalt in an accessible roof area. Moreover, no actual reason was ever offered as to why the fire Marshall had any reason to believe a "criminal hand" had been the cause. Fire Marshall Colon gave no persuasive reason why it was contrary to policy to qualify the cause with the word "apparent" as initially written by the local acting fire sergeant or to why he insisted on immediately writing this conclusion. He also did not explain why this conclusion was inconsistent with the final police report which states that he (Fire Marshall Colon), "presumed that it was negligence" due to the roofing contractor.

The release of the initial report to Arroyo (within 2 days of the fire and just in time for him to use it for his memo), just a day before the election is also fraught with irregularity. Clearly, Arroyo or Respondent's counsel made some special effort to override the local acting fire sergeant and to get the expedited release of a preliminary report from Fire Marshall Colon. The net effect of these surrounding circumstances leads to the inference that the Respondent influenced the release, and possibly the preliminary finding of cause, just after the fire and immediately prior to the election in order to use an inflammatory conclusion to disparage and imply blame on the Union. The Respondent's rush to use negative propaganda, even if tempered with a self-serving subsequent disclaimer,[7] clearly supports a conclusion that it did not have an objective basis for linking the Union to the cause of the fire or other acts of violence and that it made these misrepresentations in order to undermine the support for the Union and to interfere with, restrain, and coerce employees in the exercise of their rights.

I find that the several allegations involving Respondent's showing of the video, the memo to employee's about the fire and its supervisor/agents statements to an employee about seeing what was shown in the video are interrelated. The video does not stand alone and I find that the total effect of the visual and audio message misrepresents a linkage of the Charging Party Union with fires and violence, and it conveys threats of plant closure and loss of benefits if the Union wins the election.

This message was delivered just prior to the election and it was accompanied by a verbal reminder of the message by a supervisor to one employee and by a memo from the plant manager which in effect highlighted and emphasized the threatening and unlawful aspect of the video and which was quickly conveyed to the employees in order to utilize the shock value related to the misrepresentation of an actual fire of accidental cause that had just occurred at the plant.

Under these circumstances, I find that the General Counsel has shown that the contents of the video shown to employees on June 20 and 21, the verbal message by a supervisor/agent to an employee, and the plant manager's memo of June 21 to employees each interfered with, restrained, and coerced employees in the exercise of their rights guaranteed them by Section 7 of the Act and I find that by these actions Respondent has violated Section 8(a)(1) of the Act.

E. Objections, Majority Status, and Request for a Bargaining Order

I find that the objections to the election should be sustained to the extent they are consistent with the finding of violative conduct set forth above and that they otherwise should be dismissed.

[7] Arroyo's public disclaimer that he could not accuse anyone of causing the fire was on TV and was not communicated by the same medium, as the printed memo to which all employees implied the linkage of the fire to the Union and at no time did the Respondent publicize the final report blaming contractor negligence.

Where objectionable conduct and violations of the Act have occurred during the critical period prior to an election the NLRB has broad discretion to devise remedies, such as issuance of a bargaining order. The Supreme Court in *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969), approved the remedial use of bargaining orders in two types of cases involving employer misconduct. The first category of cases involve conduct found to be "outrageous" and "pervasive." The second category involves "less extraordinary cases marked by less pervasive practices which nonetheless still impede the election process." In the latter cases, the General Counsel must prove that: (1) the union was at some point supported by a majority of the bargaining unit employees; and (2) the employer's unfair labor practices undermined the union's majority strength and "the possibility of erasing the effects of past practices and of ensuring a fair election (or a fair rerun) by the use of traditional remedies, though present, is slight."

Within these guidelines, I conclude that the record of violations in this case does not show outrageous or pervasive unfair labor practices, however, it does include "classic" examples of practices; which tend to undermine majority strength and impede the election process. Here, Respondent's unfair labor practices appear to be of a nature that would tend to have a critical impact on the election machinery and I find that they will sustain a bargaining order.

The record shows that there were 125 eligible voters and 123 cast ballots, 6 of which were challenged. Accordingly, if the Union had a card majority of 62 of 123 (valid votes and challenged ballots),[8] or alternatively 59 valid cards if the valid votes counted (117) could be considered the appropriate base figure. The General Counsel contend that the Union obtained 71 valid cards as of May 5. The General Counsel presented a great deal of testimony regarding the conditions under which the cards were signed and their authenticity. The Respondent conducted a meticulous and thorough cross-examination of this testimony and elicited testimony from several that they had signed cards for the purpose of getting the card solicitors "off their back" and that some employees were told their signature was sought in order to have new elections.[9] The Respondent argues that most of the employees also testified that they did not "feel" threatened and that the Respondent's preelection conduct did not affect the way they voted.

The front of the authorization card is headed:

REPRESENTATION CARD

It provides for name, address, place of employment, etc., and then states:

I hereby accept by this means to become a member of Congreso de Uniones Industriales de Puerto Rico. I hereby authorize said union to represent me in collective bargaining with regard to wages, hours and work conditions.

The card then provides for the signature and date. The reverse side reads:

REPRESENTATION CARD

Application for membership to improve wages benefits and work conditions.

Congreso de Uniones Industriales de Puerto Rico

It also gives the address and phone numbers for the Union.

The Union collected similar cards during 1992, and went to an election in February 1993. As noted, the Union lost the election but filed Charges. On March 31, 1994, the administrative law judge issued his decision finding some unfair labor practices and ordered a second election. As the Respondent's appeal of the representation case would take at least several months, the Union consulted with employees and they decided they wanted a new election promptly. In approximately 3 weeks, the Union collected 71 cards out of a possible 125 employees. Eighteen identified employees signed the cards at the first meeting held on April 16 or 17. Eddie Hernandez obtained and observed the signing of 10 authorization cards and he testified that when he distributed the cards he told the employees that the cards were for a new election and for the Union to represent them. Jose Luis Ayala obtained and observed the signing of 10 cards, Armando Ayala 7 cards, and Efigenio Mejias testified that he signed a card that was given to him by Hector Figueras and that he gave a card to sign to Eddie Nelson Morales, who signed it in his presence. Also, 22 other employees individually testified that they signed union cards. Max Quinones and Angel David Belen Mojica also signed cards. Quinones was in the continental United States at the time of the hearing and did not testify. Angel David Belen Mojica was subpoenaed to testify, however, he did not show up. A comparison of the signatures on their cards with documents obtained from their personnel files shows that their cards are authentic.

Here, although several employees said they were told the cards were for another election, none testified that they were told the cards would be used *only* or *solely* for obtaining an election. Otherwise, the cards were in Spanish, all employees were literate and read the cards before signing and there is no indication that any of them were unable to understand the clear, unambiguous wording of the cards (which does not mention elections).

As stated in *DTR Industries,* 311 NLRB 833 (1993), the *Gissel* rule holds: "that employees are bound by the clear language of what they sign unless there is a deliberate effort to induce them to ignore the card's express language by telling them that the sole and exclusive purpose of the card is to get an election." The Board held that when an employee is offered an unambiguous card and is told that it is for an election the card is valid.

There is no showing that any of the cards were obtained by any misrepresentation or coercion and the fact that a few signed because of peer pressure or to get the solicitor "off their back," does not invalidate the card, see *DTR Industries*, supra at 840, where it finds:

> [W]here as here, the purpose of the card is set forth on its face in unambiguous language, the Board may not, in the absence of misrepresentation s, inquire into the subjective motives or understanding of the card signer to determine what the signer intended to do by signing the card. *Gissel* held that such evidence is not permissible. The court specifically rejected "any rule that requires a probe of an employee's subjective motivations as involving an endless and unreliable inquiry" due to the tendency many months after a card drive and in response

[8] Inasmuch as the challenged ballots were not determinative of the results, their status was not resolved.

[9] Although the Respondent persisted in this line of inquiry at the hearing, its brief contains no analysis or transcript citations which would tend to show that any particular number of card signers were effected.

to questions by company counsel, to give testimony damaging to the union, particularly where the company, as in the instant case, has threatened employees in violation of Section 8(a)(1).

Under these circumstances, I find that as of May 5 prior to the election on June 22 and prior to the Respondent's demonstrated conduct between June 20 and 22 which violated the Act, the Union had valid authorization cards from more than a majority of the bargaining unit employees.

The overall record shows that the Respondent committed serious unfair labor practices including repeated threats of plant closure and informing employees that selection of the Union would result in loss of benefits and I find that its actions have destroyed conditions that would allow a fair, free, and open election. Respondent's actions were not isolated and it came down with an intensive propaganda blitz by video and memo which emphasized the threat of plant closure and it seriously denigrated the Union in the eyes of employees by illegally misrepresenting and linking the Union with the threat of plant closure and with fires and acts of violence with communications that went beyond the bounds permitted by Section 8(c) of the Act.

Here, the impact of the Respondent's communications is heightened by its capitalization on the actual fire at the plant just a few days before the election, the fires shown and discussed in the video and the undisguised attempt to link the Union and criminal blame for the fire in the memo distributed under the name of the plant manager immediately prior to the election.

These factors demonstrate conduct which is highly coercive and serious and substantial in effect. I conclude that a fair election untainted by the undermining impact of Respondent's conduct would be unlikely and I can find no mitigating circumstances that would indicate or persuade me that a fair election is possible.

Here, the support for the Union went from 71 unambiguous authorization cards to the casting of 49 votes favorable to the Union within a 7-week period. Even allowing for a handful of employees who may have had independent reasons for voting against the Union because they signed a card just to get the collector off their back, I must infer that the Respondent's last minute propaganda campaign, with its embraced illegal threats and graphic disparagement of the Union, contributed significantly to the Union's loss of the election.

At the very least, of course, the Respondent's illegal conduct would require the holding of a third election. Here, however, the impact of the Respondent's success in twice restraining the employees initial selection of the Union by a majority of authorization cards is combined with the effect of threats of plant closure on employees in the significantly restricted job opportunity climate that exist in Puerto Rico and I find that it underscores the gravity of Respondent's misconduct. I find that the Union's card majority provides the more reliable testified of employee's desires, uninfluenced by Respondent's threatening conduct, than a third contested election and accordingly, I find that a bargaining order is shown to be justified.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The unit is appropriate for collective bargaining is:

All production and maintenance employees including machine shop, finish, making, maintenance and quality department employees, drivers, mechanics electricians, welders, production inventory clerks, expediters, and warehouse employees; but excluding all other employees, office clericals, administrative and managerial employees, guards and supervisors as defined in the Act.

4. At all times pertinent Magali Cruz was a supervisor and agent within the meaning of Section 2(11) and (13) of the Act such that her conduct in relation to Respondent's employees is attributable to the Respondent.

5. From on or about May 5, 1994, a majority of the unit designated and selected the Union as their representative for the purpose of collective bargaining and the Union by virtue of Section 9 of the Act has been and is the exclusive representative of the unit for the purpose of collective bargaining.

6. By threatening to move its products to Boston if the Union won the election, by showing a video which communicated a visual and verbal message that threatened plant closure, threatened loss of benefits, and disparaged and linked the Union with fires, violence, and strikes, by telling an employee that the video he saw depicted three fires and strikes showed what the Union would give him, and by giving employees a memo that linked the Union with fires, violence, and a fire caused by a criminal hand that could have destroyed their place of employment , inorder to induce them to vote against the Union, Respondent has interfered with, restrained, and coerced employees in the exercise of their rights guaranteed them by Section 7 of the Act, and thereby has engaged in unfair labor practices in violation of Section 8(a)(1) of the Act.

7. The election objections of the Union are sustained to the extent they coincide with the conclusions above and they are otherwise dismissed.

8. The Respondent has engaged in unfair labor practices which undermine the Union's majority status and impede the election process, and which would make the possibility of a fair rerun election slight.

9. A bargaining order is necessary to remedy the Respondent's unfair labor practices.

10. The Respondent is otherwise not shown to have engaged in conduct violative of the Act as alleged in the complaint.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find it necessary to order it to ceases and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Because a failure to grant a bargaining order as requested by the General Counsel would tend to reward the Respondent for its wrongdoing, *Impact Industries*, 285 NLRB 5 (1987), and because the Respondent has engaged in misconduct that has undermined the election process and otherwise demonstrates the need for a *Gissel* order, I recommend that the Respondent be required to recognize and bargain with the Union and, if agreement is reached, to reduce the agreement to a written contract.

Otherwise, it is not considered to be necessary that a broad order be issued.

[Recommended Order omitted from publication.]